

This petition is directed against the order dated 25.09.2007 passed by the learned Civil Judge, Bongaigaon in Misc. (J) Case No.42/2007 arising out of Misc. (A) Case No.4/2007 whereby and whereunder the order of injunction dated 15.09.2007 passed by the learned Trial Court in Misc. (J) Case No.42/2007 has been stayed on two grounds, namely:-

(i) No reason as required under proviso to Rule 3 of Order 39 of the Civil Procedure Code has been recorded before granting injunction without issuing the notice to the defendant/opposite party.

(ii) For not taking required steps under the said provision of law.

I have heard Mr. AK Goswami, the learned Sr. counsel appearing on behalf of the petitioner. Also heard Mr. AS Choudhury, the learned Sr. counsel appearing on behalf of the opposite parties.

By order dated 15.09.2007 passed by the learned Trial Court in Misc. (J) Case No.42/2007 filed by the present petitioner in a suit filed by him an order of injunction was granted without issuing any notice as required under Order 39 Rule 3 of the CPC. Against such order, the appeal was preferred by the present opposite parties before the learned Appellate Court, which has been stayed by the impugned order dated 25.09.2007 as aforesaid.

It appears that the appeal has been fixed for service report and record on 16.10.2007, i.e. tomorrow. During the course of argument the learned Sr. counsel appearing on behalf of the parties have submitted that there is no dispute to the fact that the steps required to be taken after passing the order of injunction was taken on 17.09.2007 and the notices by Registered post were issued on 18.09.2007. Since the appeal is against the order of injunction and the learned Appellate Court is required to come to the finding whether the order of injunction at all was required to be passed by the learned Trial Court and whether any reason has been given by the learned Trial Court in passing the order of injunction ex-parte without issuing any notice and also whether the required steps after issuing of injunction has been issued, in my considered opinion and in view of the aforesaid position, no record is required for disposal of the appeal against the order of injunction passed by the learned Trial Court on 15.09.2007 as the required materials are already available on the record of the learned Appellate Court below.

In view of the aforesaid position, as agreed to by the learned counsel for the parties, the present petition is disposed of with a direction to the learned Appellate Court to take up the appeal itself for hearing and disposal on 16.10.2007, i.e. tomorrow. The learned Sr. counsel for the parties have also assured this Court that they will appear and no adjournment before the learned Appellate Court will be taken and will argue the appeal on merit. Since there may be delay in communicating this order as the learned First Appellate Court has fixed the case on 16.10.2007, i.e. tomorrow. The parties will file an affidavit before the said Court regarding the direction issued by this Court for taking up the appeal for hearing tomorrow itself, without the records of the learned Court below. Such affidavit shall be taken on file by the learned Appellate Court and will hear the appeal on merit.

The petition stands disposed of.